IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

LRs of Rashida Gajdar
vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.1983/2003 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 13th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.M.A. Siddiqui, Advocate for the petitioners.
Mr.Rameshwar Dave, Dy.Govt. Advocate.
Mr.Sandeep Shah, Advocate for the respondent.

BY THE COURT

The petitioners who are LRs of Smt. Rashida Gajdar in this writ petition have claimed the benefit of selection scale. Smt. Rashida was serving the respondent as Teacher having

been appointed as such in the year 1965. She continuously served the respondent up to 31st January, 2002 and then she retired on attaining the age of superannuation.

According to the petitioners, she was entitled to the benefit of selection scale made admissible to the Government Teachers by Circular dated 25th January, 1992 on completion of 9, 18 and 27 years of service. The scheme envisaged in the aforesaid circular was that in case the government servant has not been granted at least one promotion in service span of 9 years, he/she shall be entitled to selection scale corresponding to the scale of pay of the post of promotion.

The respondents have contested the writ petition and have submitted that their society is receiving grant in aid only in relation to secondary section of the school and not for primary and pre-primary section thereof. According to learned counsel for the respondents, even under the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rajasthan Non-Government Educational Institutions

(Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993, only primary and secondary sections are included within the purview of non-government institution. According to him, the pre-primary section where said Smt.Rashida Gazdhar was serving was not even required to seek recognition form the government and therefore would not fall within the definition of recognized institution as given in Section 2(S) of the Act. He therefore argued that the selection scale cannot be ordered to be given to the said Smt. Rashida Gazdhar.

A Full Bench of this Court in S.R. Higher Secondary School & Anr. vs. Raj. Non-Government Educational Institutions Tribunal, Jaipur & 23 Ors., reported in 2002 (3) WLC (Raj.) 586 on consideration of the very same controversy held that when the Teachers working in Government Educational Institutions are entitled to selection grade, on the same line Teachers working with Non-Government Educational Institutions also entitled to the same selection grade. The Full Bench did not make any distinction whether such selection scale would be available only in relation to that part of the

school which is receiving grant-in-aid and not for the other part against which grant-in-aid was not being provided by the Government. Although the Full Bench held that once when the Government decides to provide grant-in-aid in accordance with Section 7 of the Act, it leaves no room for the sanctioning authority to exercise its discretion to grant or not to grant aid in respect of items covered by that Section. Selection scale being salary, it will form part of grant-in-aid and thus the State Government in that eventuality should sanction the grant in accordance with the percentage prescribed to the category in which the institution is placed.

Arguments raised by the learned counsel for the respondents though at the first blus appears to be attractive but on closer scrutiny are found without any substance. It cannot be accepted that when the school run by the respondent namely Saint Patricks Vidhya Bhavan, Senior Higher Secondary School is a recognized and aided Non-Government Educational Institution, just because it is not receiving any aid against its pre-primary section, that part of the institution

would not be covered by the provisions of the Act. Reference in this connection may be made to Rule 2(c) of the Rules of 1993 which provides as under:-

> "(c)'**AIDED INSTITUTION**' means, a recognized institution, which is receiving regular aid in the form of maintenance grant from the State Government.
>
> Explanation:- If any part of an institution receives maintenance grant, the entire institution shall be treated as aided institution irrespective of whether any other part of the institution is or is not covered by the aid."

A perusal of the aforesaid definition of the aided institution would clearly make it clear that aided institution has been defined to mean a recognized institution which is receiving regular aid in the form of maintenance grant from the State Government but the explanation thereto amplifies scope of the definition by providing that if any part of an institution receives maintenance grant, the entire institution shall be treated as aided institution irrespective of fact whether any other part of the institution is or is not covered by the aid. A legal fixation has thereupon created in relation to that part of the institution for which no aid is received and therefore such part has to be for the purpose of the act of 1989 and the Rules

framed thereunder, treated as an aided institution regardless of the fact that grant in aid is not being provided by the Government in relation thereto. It also cannot be accepted that when the parent school i.e. Saint Patricks Vidhya Bhavan Senior Higher Secondary School itself has been recognized not only for its secondary section but also for primary section, pre-primary section, the running of which is facilitated only because the school is having recognition of its secondary and primary section, its pre primary section would not be taken as part of the educational institution for the purpose of the Act.

The matter being covered by the Larger Bench decision of this Court in S.R. Higher Secondary School (supra) which has been upheld even by Hon'ble Supreme Court (2005 (1) WLC 301) the present writ petition deserves to be allowed and is accordingly allowed. The respondent No.3 is directed to pay to the petitioner benefit of selection scale and its arrears to legal representative of Smt.Rashida Gazdhar who served with them as Teacher within a period of three months from the date of service of this judgment. The respondent would be at liberty

to submit representation to the Government to claim proportionate grant-in-aid in relation to the aforesaid amount in terms of the observations made by Full Bench in para 20.

The writ petition is accordingly allowed with no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-